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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,383	07/25/2003	Hidekazu Tanaka	AA-538C	3912

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EXAMINER
VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/627,383	TANAKA, HIDEKAZU	
	Examiner	Art Unit	
	JYOTHSNA A VENKAT Ph. D	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-10 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, and 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent 5,871, 760 ('760).

See examples I-V at col.13. Mineral oil and petrolatum reads on the claimed emollient oil, glycerine reads on the claimed water soluble humectant, Carbopol reads on the claimed carboxylic acid/carboxylate copolymer, dimethicone reads on the claimed silicone component, water reads on the claimed aqueous carrier, see col.11, lines 40-42, and 45 for the claimed panthenol which is the claimed tacky skin treatment agent. see the abstract for the claimed method of claim 8. see col.13, lines 55-65 for the claimed method. Since the ingredients are same, claim 2 is inherent. The use of the term “ comprising” permits the presence of other ingredients and does not preclude the presence of other ingredients, active or inactive, even in major amounts. **Moleculon Research corp., v. CBS, Inc.**, 793 F. 2d 1261, 229 USPQ 805 (FED. Cir. 1986); **In re Baxter**, 656 F. 2d 679, 210 USPQ 795, 803 (CCPA 1981).

3. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U. S. Patent 5,997, 887 ('887).

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See examples 4-7 at paragraph bridging col.s 40-41. Sucrose cocoate reads on the claimed emollient oil, glycerine reads on the claimed water soluble humectant, Carbopol reads on the claimed carboxylic acid/carboxylate copolymer, dimethicone and dimethiconol reads on the claimed silicone component and also mixture of high viscosity silicone compound which is dimethiconol and dimethicone reads on the claimed silicone based carrier, water reads on the claimed aqueous carrier, niacinamide is the claimed tacky skin treatment agent. see the abstract for the claimed method of claim 8, see paragraph bridging col.s 41-42 for the claimed method. Since the ingredients are same, claim 2 is inherent. The use of the term “ comprising” permits the presence of other ingredients and does not preclude the presence of other ingredients, active or inactive, even in major amounts. **Moleculon Research corp., v. CBS, Inc.**, 793 F. 2d 1261, 229 USPQ 805 (FED. Cir. 1986); In **re Baxter**, 656 F. 2d 679, 210 USPQ 795, 803 (CCPA 1981).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patents '887 or '760.

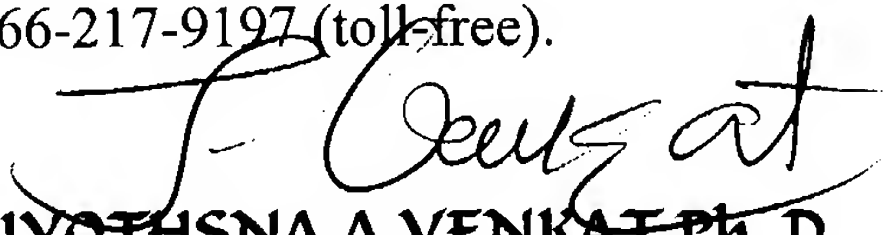
The patents cited above anticipate claims . The patents do not teach the limitation of claim 10, which is mixing the step (a) at a rotation speed of no more than about 5000 rpm. Mixing components and changing the speed is within the ken of the skilled chemist since the higher the speed of rotation higher the homogeneous mixing of ingredients. Absent a showing the criticality of claim 10 limitation giving unexpected and superior results, the claims are rendered prima facie obvious over the patents '887 or '760.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615
